

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the  
License of Sheryl Sobaski To Provide  
Adult Foster Care under Minn. R. pts.  
9555.5105 to 9555.6265

**FINDINGS OF FACT,  
CONCLUSIONS  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on October 29, 2009, at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota. The OAH record closed at the end of the hearing on October 29, 2009.

David F. McMillan, Assistant Ramsey County Attorney, 15 West Kellogg Boulevard, Suite 560, St. Paul, Minnesota 55102-1556, appeared at the hearing as attorney for the Minnesota Department of Human Services and the Ramsey County Community Human Services Department. The Licensee, Sheryl Sobaski, appeared on her own behalf, without counsel.

**STATEMENT OF THE ISSUES**

1. Should the disqualification of Nathaniel Sobaski be set aside; and
2. Should the Department of Human Service's order of revocation of Sheryl Sobaski's adult foster care license be affirmed because a disqualified individual was residing in her daycare home?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Ms. Sheryl Sobaski ("Licensee") has been licensed to provide adult foster care services for 21 years, in recent years with a license for four adult females at her home in St. Paul, Ramsey County, Minnesota ("the home").<sup>1</sup> Licensee provides 24-hour care seven days a week for four female developmentally disabled adults. Licensee has cared for one of the women for 20 years. Two of the women have been cared for by Licensee for eight years, and one for seven years. One of the women has cancer.

---

<sup>1</sup> Testimony of Sheryl Sobaski and Karen Biermaier, Ramsey County Social Worker and adult foster care licensor, Ex. 14.

Licensee provides room and board for these women and ensures that all of their needs are met with supervision, security and stability.<sup>2</sup>

2. Also living in the home is Licensee's daughter and until July 11, 2009, her adult son Nathaniel Sobaski.<sup>3</sup>

3. The home is a two level home in the nature of a duplex. From the front entrance on the lower level to the right is the living area for the four women in Licensee's care, including a living room, dining area, kitchen, bathroom and four bedrooms. From the front entrance up a set of stairs and on the upper level is Licensee's living area where she and her daughter live. Mr. Sobaski's bedroom was in a tuck-under garage on a lower level, without direct access to the living area of the four women in foster care. Mr. Sobaski's access to the home was from an outside set of stairs up to an upper level door.<sup>4</sup>

4. In 21 years, Licensee has had no licensing violations or other licensing issues with the exception of the disqualification of Nathaniel Sobaski that is at issue in this proceeding.<sup>5</sup>

5. On February 20, 2008, Nathaniel Sobaski, the driver and sole occupant in Licensee's car, was pulled over by the police in Brooklyn Center, Minnesota, at approximately 11:20 p.m. A backpack located between the front seats of the car contained over 45 grams of marijuana, together with 0.2 grams of cocaine, three Prednisone pills for which Mr. Sobaski did not have a prescription, and pills believed to be Ecstasy. Mr. Sobaski was booked and released.<sup>6</sup>

6. Licensee's car was released to her on February 26, 2008.<sup>7</sup>

7. The routine annual background checks for 2008 on Licensee, her daughter and Mr. Sobaski were completed and revealed that there was something on Mr. Sobaski's record. Ms. Karen Biermaier, Ramsey County Social Worker and adult foster care licenser, told Licensee that she should ask her son about his record. Licensee asked Mr. Sobaski as suggested. He did not disclose any specifics to Licensee and told her not to worry and that he would take responsibility for it.<sup>8</sup>

8. On September 10, 2008, Mr. Sobaski was charged with one felony count of possession of a controlled substance in the fifth degree in violation of Minn. Stat. § 152.025.2(1).<sup>9</sup>

---

<sup>2</sup> *Id.*

<sup>3</sup> Test. of K. Biermaier and S. Sobaski, Exhibit 17.

<sup>4</sup> *Id.*

<sup>5</sup> Test. of K. Biermaier and S. Sobaski.

<sup>6</sup> Ex. 1.

<sup>7</sup> *Id.*

<sup>8</sup> Test. of K. Biermaier and S. Sobaski.

<sup>9</sup> Ex. 1.

9. On December 12, 2008, Mr. Sobaski pled guilty to one felony count of possession of a controlled substance in the fifth degree in violation of Minn. Stat. § 152.025.2(1). Condition number six of his release was that he remain law abiding.<sup>10</sup>

10. On January 1, 2009, Mr. Sobaski was arrested for disorderly conduct in violation of Minn. Stat. § 609.72.<sup>11</sup>

11. The routine annual background checks for 2009 on Licensee, her daughter and Mr. Sobaski were completed and revealed Mr. Sobaski's conviction.<sup>12</sup>

12. On March 5, 2009, the entire six members of the County licensing unit independently conducted risk of harm analyses on Mr. Sobaski and Licensee's program. All determined that there was a low risk of harm to Licensee's residents presented by Mr. Sobaski. All determined that there was no similarity between the victim(s) of Mr. Sobaski's crime and the persons served by the Licensee.<sup>13</sup>

13. On March 6, 2009, the County sent Nathaniel Sobaski a letter notifying him of the disqualification from direct contact with or access to persons served by the Department. Mr. Sobaski received the disqualification letter on March 7, 2009.<sup>14</sup>

14. On March 8, 2009, Nathaniel Sobaski requested reconsideration of the disqualification decision.<sup>15</sup> The request for reconsideration was received on March 13, 2009.<sup>16</sup> Mr. Sobaski's entire response to the question "Why would you not pose a risk of harm to the persons served by the program where you work or live? Provide explanation." was:

I do not have any direct contact with them. Further I am on probation and not involved with any illegal activities.<sup>17</sup>

15. Prior to June 23, 2009, Ms. Biermaier advised Licensee during a conversation that she would be recommending the revocation of Licensee's adult foster care license because Nathaniel Sobaski was still living in the home. Licensee advised Ms. Biermaier that her son would be moving out of the home.<sup>18</sup>

16. Upon the direction from the Department, on June 23, 2009, Ramsey County recommended that the Department issue an order of revocation, pursuant to Minn. Stat. § 245A.07, revoking Licensee's license to provide adult foster care.<sup>19</sup>

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, Test. of K. Biermaier.

<sup>13</sup> Ex. 2, Test. of K. Biermaier.

<sup>14</sup> Ex. 3.

<sup>15</sup> Ex. 5, Test. of K. Biermaier.

<sup>16</sup> Ex. 10.

<sup>17</sup> Ex. 5.

<sup>18</sup> Test. of K. Biermaier.

<sup>19</sup> Test. of K. Biermaier, Ex. 8.

17. On June 23, 2009, Ramsey County notified Licensee by letter of its revocation recommendation to the Department, without stating a reason for the revocation recommendation.<sup>20</sup>

18. On July 2, 2009, Mr. Sobaski and Licensee paid a \$750.00 security deposit toward and applied for a residential lease for Mr. Sobaski on an apartment in Maplewood, Minnesota.<sup>21</sup>

19. The application was approved and Licensee helped move Mr. Sobaski and his belongings to his Maplewood apartment on July 11, 2009. Beginning July 11, 2009, Mr. Sobaski no longer lives in Licensee's home.<sup>22</sup>

20. Licensee intends for Mr. Sobaski to visit her in her home occasionally. He would remain on the upper level of the home and would be under Licensee's direct supervision at all times and would have no direct, unsupervised contact with any of the four women in adult foster care.<sup>23</sup>

21. On July 22, 2009, the Department issued to Nathaniel Sobaski its decision not to set aside his disqualification, stating that the following factors were determinative:

1. The vulnerability of the persons served in the program
2. You have failed to provide any evidence of your rehabilitation or explain why you believe you have been rehabilitated. As a result, there is no evidence that you have undergone changes in your attitude and behavior that will make it unlikely that you will commit a similar act in the future.
3. It appears that you have not taken responsibility for your actions. As a result, you are less likely to change your behavior in the future.
4. It has been less than two years since you committed the disqualifying offense. This type of offense is a disqualification for 15 years from the time you committed the offense. It is therefore too soon to conclude that you have changed your attitude and behavior.
5. On July 8, 2009, you were convicted of engaging in fighting or brawling under Minnesota Statutes, section 609.72 and on April 23, 2009 [sic], you were convicted of possessing marijuana in a motor vehicle under Minnesota Statutes, section 152.027. Although these crimes are not disqualifications they show a disregard for the law and rules and show a continuing behavior of engaging in illegal behavior that represents a risk of harm to persons served by the program.<sup>24</sup>

---

<sup>20</sup> Ex. 7.

<sup>21</sup> Ex. 17.

<sup>22</sup> Test. of S. Sobaski, Ex. 17.

<sup>23</sup> Test. of S. Sobaski.

<sup>24</sup> Ex. 9.

22. Mr. Sobaski did not appeal the adverse reconsideration decision.

23. On July 22, 2009, the Department issued to Licensee an Order of Revocation of "your license to provide child foster care under the provisions of Minnesota Rules, parts 2960.3000 to 2960.3340."<sup>25</sup>

24. Licensee does not and has never had a license to provide child foster care.<sup>26</sup>

25. On July 30, 2009, Licensee filed a timely appeal from the Order of Revocation and requested an appeal hearing pursuant to Minn. Stat. § 245A.07 (2008).<sup>27</sup>

26. On August 5, 2009, Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services, executed a Notice of and Order for Hearing scheduling a contested case hearing on October 29, 2009.

27. On September 18, 2009, Licensee provided the County with written evidence that Nathaniel Sobaski was no longer living in Licensee's home.<sup>28</sup>

28. On October 8, 2009, the Administrative Law Judge issued a Protective Order, which was served upon the parties by mail on October 8, 2009.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner

---

<sup>25</sup> Ex. 10.

<sup>26</sup> Test. of S. Sobaski. Minnesota rules are cited to the 2007 edition.

<sup>27</sup> Ex. 11. Minnesota statutes are cited to the 2008 edition.

<sup>28</sup> Exs. 17 and 18, Test. of S. Sobaski.

demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

5. Minn. Stat. § 245C.03, subd. 1(2) requires that background studies be conducted regarding “an individual age 13 and over living in the household where the licensed program will be provided.”

6. Minn. Stat. § 245C.14 regarding disqualification provides in relevant part:

Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder . . . upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

(1) a conviction of, admission to, or Alford plea to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;

7. Minn. Stat. § 245C.15 regarding disqualifying crimes or conduct provides in relevant part:

Subd. 2. **15-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than 15 years have passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a felony-level violation of any of the following offenses: . . . chapter 152 (drugs; controlled substance); or a felony-level conviction involving alcohol or drug use.

8. Nathaniel Sobaski was convicted of a chapter 152 drug offense listed in Minn. Stat. § 245C.15, and is therefore disqualified for 15 years from having direct contact with persons cared for by Licensee, as required by Minn. Stat. § 245C.14.

9. Under Minn. Stat. § 245C.14, subd. 2(b), an individual’s disqualification may be set aside if the individual does not pose a risk of harm to any person served by the Licensee. In determining whether an individual does not pose a risk of harm, the factors to be considered are:

1. The nature, severity, and consequences of the event or events that led to the disqualification;
2. Whether there is more than one disqualifying event;
3. The age and vulnerability of the victim at the time of the event;

4. The harm suffered by the victim;
5. The similarity between the victim and the person served by the program;
6. The time elapsed without a repeat of the same or similar event;
7. Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
8. Any other information relevant to reconsideration.<sup>29</sup>

10. Licensee failed to prove by a preponderance of the evidence that Mr. Sobaski presents no risk of harm to the women in her care. Therefore, the Commissioner should not set his disqualification aside.

11. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to consider “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights” of those persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

12. The Commissioner has advanced evidence establishing reasonable cause to believe that, prior to issuing its Order of Revocation, Licensee allowed a disqualified individual to remain a resident in the household, resulting in a violation of Minn. Stat. §§ 245A.07 and 245C.14.

13. Licensee has proved by a preponderance of the evidence that she was in compliance with Minn. Stat. §§ 245A.07 and 245C.14, and did comply with the law by removing Nathaniel Sobaski from residence in the home on July 11, 2009, and that Nathaniel Sobaski was not a resident in the home after July 11, 2009, as required by section 245C.14.

14. Subpart 3 of Minn. R. 9555.6175 requires that adult foster care licensees report to the local agency any change in the regular membership of the household within five calendar days.

15. The Commissioner has advanced evidence establishing reasonable cause to believe that Licensee did not report Mrs. Sobaski’s change of residence by July 16, 2009.

16. Licensee has failed to prove by a preponderance of the evidence that she was in compliance with subpart 3 of Minn. R. 9555.6175. She did not report to Ramsey County within five calendar days that her son has moved out on July 11, 2009.

17. Minn. Stat. § 245A.04 provides in applicable part:

---

<sup>29</sup> Minn. Stat. § 245C.22, subd. 4.

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder. The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

18. As provided in Minn. Stat. §§ 245A.04, subd. 6, and 245C.16, the County and the Department considered some facts, conditions, and circumstances concerning the program's operation and the vulnerability of persons served by the program. The County and the Department did not consider available consumer evaluations of the program, the value of continuity of care and the overall well being of the four women in Licensee's care. The Commissioner evaluated the results of the background study for Mr. Sobaski and applied the disqualification standards set forth in chapter 245C.

19. The four women being served by Licensee would be harmed by the revocation of Licensee's license because they would lose the stability and security of their long-term home.<sup>30</sup>

20. Minn. Stat. § 245A.06, subd. 1., concerning **Correction Orders and Conditional Licenses** provides in relevant part:

(a) If the commissioner finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the applicant or license holder. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

29. Licensee's failure to remove Nathaniel Sobaski from her home during the period from March 6, 2009, to July 11, 2009, while the Department was considering Mr. Sobaski's request for reconsideration of his disqualification did not imminently endanger the health, safety, or rights of women served by the Licensee.

30. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

---

<sup>30</sup> Test. of S. Sobaski, Ex. 21.



31. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

1. The disqualification of Nathaniel Sobaski not be set aside; and
2. The revocation of the adult foster care license of Ms. Sheryl Sobaski be withdrawn and rescinded.

Dated: November 25, 2009

s/M. Kevin Snell

M. Kevin Snell  
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

### **NOTICES**

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.<sup>31</sup> Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline

---

<sup>31</sup> Minn. Stat. § 14.61.

for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

## **MEMORANDUM**

### **Set Aside of the Disqualification of Nathaniel Sobaski**

The disqualification of Mr. Sobaski itself is not an issue in this proceeding. He did not appeal the Commissioner's determination on the request for reconsideration. Therefore the disqualification determination is final. The issue to be determined in this proceeding is whether or not Licensee has established by a preponderance of evidence that her son presents no risk of harm to the women in her care.

Conviction for the commission of certain crimes carries with it a mandatory disqualification from direct contact with persons being cared for in programs licensed by the Department. Neither the Commissioner nor the Administrative Law Judge may sidestep or overlook those disqualifications. There is no discretion once those determinations become final. Depending on the seriousness of the crime, as determined by the legislature when creating the law, a disqualification may be permanent, for a period of 15 years, for a period of 10 years, or for a period of seven years. Mr. Sobaski's disqualification falls into the 15-year category.

The law allows the Commissioner to set aside a disqualification only for the purposes of the individual licensed program that is involved if the disqualified individual poses no risk of harm to the persons served by that program. Mr. Sobaski, in his March 2009 request for reconsideration, stated that he was on probation and not involved in illegal activities. The Licensee testified that she believes her son poses no risk of harm to the women in her care because she believes his assurances to her. However, the evidence in the record suggests that her confidence in his assurances is misplaced. He was arrested on January 1, 2009, and convicted of disorderly conduct on July 8, 2009. Mr. Sobaski was involved in illegal activity, contrary to his assurances and his probation conditions. It is more likely than not that Mr. Sobaski presents some risk of harm to the women in Licensee's care, as determined by the Commissioner in his denial of the request for reconsideration. The disqualification should not be set aside.

### **Licensee's Adult Foster Care License**

The Commissioner presented the testimony of the County licensing worker and documentary evidence to establish that Licensee did not provide proof of her son's departure from her home prior to the issuance of the Order of Revocation. Accordingly, the Commissioner established that reasonable cause existed to issue an Order of Revocation.

Licensee proved by a preponderance of the evidence that her son moved out of the home on July 11, 2009, and no longer lives there. This removal of the disqualified individual returned Licensee to full compliance with the law.

Considering the complete lack of chronicity of violations of rule or law during 21 years of adult foster care and the fact that the health, safety, or rights of the women in Licensee's program are best served by Licensee being able to continue to care for them, neither revocation nor suspension of Licensee's license would be reasonable.<sup>32</sup> If the Commissioner believes that a sanction is necessary for Licensee's failure to promptly report her son's removal from the home, a Conditional License placing restrictions and conditions for visits to Licensee's home by her son would be appropriate. In addition, Licensee could request a variance from the Commissioner for her son's visits.<sup>33</sup>

There is no evidence in the record to indicate that health, safety, or rights of the adult women in Licensee's care were in imminent danger at any time.

For these reasons, the Administrative Law Judge recommends that the Order of Revocation be rescinded.

**M. K. S.**

---

<sup>32</sup> Minn. Stat. § 245A.07, subd. 1.

<sup>33</sup> Minn. Stat. § 245C.30